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December 23, 2009

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Honorable Mary L. Cooper, U.S.D.J.
United States District Court - District of New Jersey
Clarkson Fisher Federal Bldg. & Federal Courthouse
Room 5000
Trenton, New Jersey 08608

Via Electronic Case Filing

RECEIVED

JAN - 4 2010

Dear Judge Cooper:

AT 8:30 _____
WILLIAM T. WALSH
CLERK

This firm represents Defendant Correctional Medical Services, Inc. ("CMS") in this matter. Please accept this letter brief in lieu of a more formal response to Plaintiff's Motion for Ninety Day Enlargement of Filing Date (Docket Entry No. 66). Plaintiff seeks to have his filing date set as February 19, 2008.

Plaintiff's Motion

Plaintiff is seeking to have his filing date for the instant matter established as February 19, 2008 instead of the actual filing date of May 28, 2008. See Pltf's Motion, p.2. Plaintiff's basis for his request was his desire to have brought the instant suit earlier despite his failure to have it filed earlier. Plaintiff claims to be seeking a 90-day enlargement of time with respect to his filing date.¹ It is unclear why Plaintiff is actually seeking this relief.

Defendant CMS's Response

Defendant CMS filed its Answer to Plaintiff's Amended Complaint on April 15, 2009. Docket Entry No. 26. Defendant CMS pleaded an affirmative defense of violation of the Statute of Limitations. Docket Entry No. 26, p. 13, Eleventh Affirmative Defense. Plaintiff's request for relief would have a considerable impact on this affirmative defense, as Plaintiff is seeking a filing date 127 days earlier than the actual filing date.

¹ February 19 to May 28 is 98 days. However, Plaintiff's Complaint was received and filed on June 26, 2008, so Plaintiff is actually seeking an enlargement of 127 days.

Fed.R.Civ.P. 3 provides:

A civil action is commenced by filing a complaint with the court.

Ibid.

In this matter, Plaintiff's Complaint was received by the Court on June 26, 2008 and filed on that date. See Docket Entry No. 1, 1-4. The Complaint is dated May 25, 2008. See Docket Entry No. 1. The certification of service is dated May 28, 2008. See Docket Entry No. 1-4. Plaintiff did not submit the Complaint for filing at any earlier date. The Complaint was filed as soon as it was received by the Court. Plaintiff's desire to have an earlier filing date has no support in the record and Plaintiff cites no rule of court or case law to support his requested relief. In fact, Plaintiff admits that he was aware as of February 19, 2008 that he would have to file a new complaint, but failed to file a new complaint for several months.

Plaintiff claims that "defendants will not be prejudiced" by an enlargement of the filing date in this matter. This is not true. In fact, since Plaintiff is seeking to have the filing date set 127 days earlier, it is clear that Plaintiff believes that a problem may exist with respect to the statute of limitations. However, with knowledge that a new complaint needed to be filed, Plaintiff failed to take the appropriate steps for more than 4 months.

Conclusion

Plaintiff has put forth no basis in law or in fact under which his original Complaint should be deemed to have been filed on February 19, 2008. It is respectfully requested that the Court deny Plaintiff's application.

Respectfully submitted,
HOLTZMAN & MCCLAIN, P.C.
/s/ Jeffrey S. McClain (JSM 0966)
Jeffrey S. McClain, Esquire

Having Consider the parties' submissions,
including the attached "Clarification" by
Plaintiff, the request to set filing date
as "19 Feb 08" is Denied.

So Ordered this 4 day
of January, 2009

J.S. Brey

Docket Entry No 66 is Terminated.

Proof of E-Filing and Service

I certify that the attached Letter Brief on behalf of Defendant Correctional Medical Services Inc. has been filed through Electronic Case Filing on this date, served upon counsel for the State defendants via the ECF system, and served upon Plaintiff Steven Bolling via regular mail as follows:

Steven Bolling, # 208254/SBI 790911A
New Jersey State Prison
3rd & Federal Streets
PO Box 861
Trenton, NJ 08625

HOLTZMAN & MCCLAIN, P.C.
/s/ Jeffrey S. McClain (JSM 0966)
Jeffrey S. McClain, Esquire

Dated: December 23, 2009